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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,131	04/14/2005	Gerd Meier	NY-DNAG-301-US	5583
24972	7590	08/10/2007		
FULBRIGHT & JAWORSKI, LLP			EXAMINER	
666 FIFTH AVE			GROUP, KARL E	
NEW YORK, NY 10103-3198				
			ART UNIT	PAPER NUMBER
			1755	
			MAIL DATE	DELIVERY MODE
			08/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,131

Applicant(s)

MEIER ET AL.

Examiner

Karl E. Group

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-22,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-22,26 and 27 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-6-07 has been entered.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 14-22,26,27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kagawa et al (5,080,378), for reasons of record.

4. Claims 14-22,26,27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Greim et al (5,939,185), for reasons of record.

5. Claims 14-21,26,27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Azema et al (5,707,065), for reasons of record.

In Kagawa because pore forming agents of a specific diameter are used it would be expected that the average diameter of the pore would have a narrow distribution. Furthermore, as to Azema and Greim the claims set forth "2 to 12 Vol% porosity,

wherein the porosity comprises unconnected pores". the claims do not set forth the body has 2-12 vol% unconnected closed pores, the claims are in fact open to other porosity to be present as long as the total porosity is 2-12 vol% therefor leaving the claims open to pores being present having different pore sizes. The instant claims only require one or two pores to be present in a size of 10-48 microns, not all the closed pores to be present in between this size..

It is argued the instant claims require a nominal diameter which is an actual diameter rather than the average, mean diameters taught in the prior art which is not persuasive. Firstly the instant claims set forth "having porosity of 2-12 vol. %, wherein the porosity COMPRISES unconnected closed pores....wherein the pores have a nominal diameter of 10 μ m to 48 μ m". Clearly the claims allow for the presence of pores having diameters of different sizes in view of the "comprising" terminology. The prior art references are considered to meet the limitation of the claims as long as some of the porosity falls within the range of diameters that fall within the claims. The 2-12 volume % is for the amount of total porosity not the amount of pores having the claimed nominal diameter.

Kagawa also teaches polystyrene beads having a specific grain diameter, not an average diameter with a large distribution as argued by applicants(see example 1 and table 1), therefor the porosity formed would also have a narrow distribution.

Claim Objections

6. Claim 14 objected to because of the following informalities: Claim 14 the terminology "a diameter of a pore forming agent for the production" is confusing.

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Terminology such as "wherein a pore forming agent for the production of the closed pores has a diameter..." is suggested.. Appropriate correction is required.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl E. Group whose telephone number is 571-272-1368. The examiner can normally be reached on M-F (6:30-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Karl E Group
Primary Examiner
Art Unit 1755

Keg
8-7-07